

FIRST REGULAR SESSION

SENATE BILL NO. 616

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MCKENNA.

Read 1st time February 28, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2485S.011

AN ACT

To repeal section 311.070, RSMo, and to enact in lieu thereof one new section relating to the advertising of liquor at retail businesses, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 311.070, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 311.070, to read as follows:

311.070. 1. Distillers, wholesalers, winemakers, brewers or their
2 employees, officers or agents shall not, except as provided in this section, directly
3 or indirectly, have any financial interest in the retail business for sale of
4 intoxicating liquors, and shall not, except as provided in this section, directly or
5 indirectly, loan, give away or furnish equipment, money, credit or property of any
6 kind, except ordinary commercial credit for liquors sold to such retail
7 dealers. However, notwithstanding any other provision of this chapter to the
8 contrary, for the purpose of the promotion of tourism, a distiller whose
9 manufacturing establishment is located within this state may apply for and the
10 supervisor of liquor control may issue a license to sell intoxicating liquor, as in
11 this chapter defined, by the drink at retail for consumption on the premises
12 where sold; and provided further that the premises so licensed shall be in close
13 proximity to the distillery and may remain open between the hours of 6:00 a.m.
14 and midnight, Monday through Saturday and between the hours of 11:00 a.m. and
15 9:00 p.m., Sunday. The authority for the collection of fees by cities and counties
16 as provided in section 311.220, and all other laws and regulations relating to the
17 sale of liquor by the drink for consumption on the premises where sold, shall
18 apply to the holder of a license issued under the provisions of this section in the
19 same manner as they apply to establishments licensed under the provisions of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 section 311.085, 311.090, or 311.095.

21 2. Any distiller, wholesaler, winemaker or brewer who shall violate the
22 provisions of subsection 1 of this section, or permit his employees, officers or
23 agents to do so, shall be guilty of a misdemeanor, and upon conviction thereof
24 shall be punished as follows:

25 (1) For the first offense, by a fine of one thousand dollars;

26 (2) For a second offense, by a fine of five thousand dollars; and

27 (3) For a third or subsequent offense, by a fine of ten thousand dollars or
28 the license of such person shall be revoked.

29 3. As used in this section, the following terms mean:

30 (1) "Consumer advertising specialties", advertising items that are
31 designed to be carried away by the consumer, such items include, but are not
32 limited to: trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle
33 or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets,
34 cards, leaflets, blotters, postcards, pencils, shirts, caps and visors;

35 (2) "Equipment and supplies", glassware (or similar containers made of
36 other material), dispensing accessories, carbon dioxide (and other gasses used in
37 dispensing equipment) or ice. "Dispensing accessories" include standards,
38 faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings,
39 gas gauges, vent tongues, shanks, and check valves;

40 (3) "Point-of-sale advertising materials", advertising items designed to be
41 used within a retail business establishment **for an extended period of time**
42 to attract consumer attention to the products of a distiller, wholesaler, winemaker
43 or brewer. Such materials include, but are not limited to: posters, placards,
44 designs, inside signs (electric, mechanical or otherwise), window decorations,
45 trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers,
46 back bar mats, thermometers, clocks, calendars and alcoholic beverage lists or
47 menus. **Such materials shall not include those that are used for short**
48 **periods of time, such as banners and decorations reflecting a particular**
49 **season or a limited-time promotion;**

50 (4) "Product display", wine racks, bins, barrels, casks, shelving or similar
51 items the primary function of which is to hold and display consumer products;

52 (5) "Promotion", an advertising and publicity campaign to further the
53 acceptance and sale of the merchandise or products of a distiller, wholesaler,
54 winemaker or brewer.

55 4. Notwithstanding other provisions contained herein, the distiller,

56 wholesaler, winemaker or brewer, or their employees, officers or agents may
57 engage in the following activities with a retail licensee licensed pursuant to this
58 chapter or chapter 312, RSMo:

59 (1) The distiller, wholesaler, winemaker or brewer may give or sell
60 product displays to a retail business if all of the following requirements are met:

61 (a) The total value of all product displays given or sold to a retail business
62 shall not exceed three hundred dollars per brand at any one time in any one
63 retail outlet. There shall be no combining or pooling of the three hundred dollar
64 limits to provide a retail business a product display in excess of three hundred
65 dollars per brand. The value of a product display is the actual cost to the
66 distiller, wholesaler, winemaker or brewer who initially purchased such product
67 display. Transportation and installation costs shall be excluded;

68 (b) All product displays shall bear in a conspicuous manner substantial
69 advertising matter on the product or the name of the distiller, wholesaler,
70 winemaker or brewer. The name and address of the retail business may appear
71 on the product displays; and

72 (c) The giving or selling of product displays may be conditioned on the
73 purchase of intoxicating beverages advertised on the displays by the retail
74 business in a quantity necessary for the initial completion of the product display.
75 No other condition shall be imposed by the distiller, wholesaler, winemaker or
76 brewer on the retail business in order for such retail business to obtain the
77 product display;

78 (2) Notwithstanding any provision of law to the contrary, the distiller,
79 wholesaler, winemaker or brewer may give or sell any point-of-sale advertising
80 materials, **temporary banners**, and consumer advertising specialties to a retail
81 business if all the following requirements are met:

82 (a) The total value of all point-of-sale advertising materials [and consumer
83 advertising specialties] given [or sold] to a retail business **by a distiller,**
84 **wholesaler, winemaker, or brewer** shall not exceed five hundred dollars per
85 year, per brand, per retail outlet. The value of point-of-sale advertising materials
86 [and consumer advertising specialties] is the actual cost to the distiller,
87 wholesaler, winemaker or brewer who initially purchased such
88 item. Transportation and installation costs shall be excluded;

89 (b) All point-of-sale advertising materials and consumer advertising
90 specialties shall bear in a conspicuous manner substantial advertising matter
91 about the product or the name of the distiller, wholesaler, winemaker or

92 brewer. The name, address and logos of the retail business may appear on the
93 point-of-sale advertising materials or the consumer advertising specialties; and

94 (c) The distiller, wholesaler, winemaker or brewer shall not directly or
95 indirectly pay or credit the retail business for using or distributing the
96 point-of-sale advertising materials or consumer advertising specialties or for any
97 incidental expenses arising from their use or distribution;

98 (3) A malt beverage wholesaler or brewer may give a gift not to exceed a
99 value of one thousand dollars per year, or sell something of value to a holder of
100 a temporary permit as defined in section 311.482;

101 (4) The distiller, wholesaler, winemaker or brewer may sell equipment or
102 supplies to a retail business if all the following requirements are met:

103 (a) The equipment and supplies shall be sold at a price not less than the
104 cost to the distiller, wholesaler, winemaker or brewer who initially purchased
105 such equipment and supplies; and

106 (b) The price charged for the equipment and supplies shall be collected in
107 accordance with credit regulations as established in the code of state regulations;

108 (5) The distiller, wholesaler, winemaker or brewer may install dispensing
109 accessories at the retail business establishment, which shall include for the
110 purposes of intoxicating and nonintoxicating beer equipment to properly preserve
111 and serve draught beer only and to facilitate the delivery to the retailer the
112 brewers and wholesalers may lend, give, rent or sell and they may install or
113 repair any of the following items or render to retail licensees any of the following
114 services: beer coils and coil cleaning, sleeves and wrappings, box couplings and
115 draft arms, beer faucets and tap markers, beer and air hose, taps, vents and
116 washers, gauges and regulators, beer and air distributors, beer line insulation,
117 coil flush hose, couplings and bucket pumps; portable coil boxes, air pumps,
118 blankets or other coverings for temporary wrappings of barrels, coil box overflow
119 pipes, tilting platforms, bumper boards, skids, cellar ladders and ramps, angle
120 irons, ice box grates, floor runways; and damage caused by any beer delivery
121 excluding normal wear and tear and a complete record of equipment furnished
122 and installed and repairs and service made or rendered must be kept by the
123 brewer or wholesalers furnishing, making or rendering same for a period of not
124 less than one year;

125 (6) The distiller, wholesaler, winemaker or brewer may furnish, give or
126 sell coil cleaning service to a retailer of distilled spirits, wine or malt beverages;

127 (7) A wholesaler of intoxicating liquor may furnish or give and a retailer

128 may accept a sample of distilled spirits or wine as long as the retailer has not
129 previously purchased the brand from that wholesaler, if all the following
130 requirements are met:

131 (a) The wholesaler may furnish or give not more than seven hundred fifty
132 milliliters of any brand of distilled spirits and not more than seven hundred fifty
133 milliliters of any brand of wine; if a particular product is not available in a size
134 within the quantity limitations of this subsection, a wholesaler may furnish or
135 give to a retailer the next larger size;

136 (b) The wholesaler shall keep a record of the name of the retailer and the
137 quantity of each brand furnished or given to such retailer;

138 (c) For the purposes of this subsection, no samples of intoxicating liquor
139 provided to retailers shall be consumed on the premises nor shall any sample of
140 intoxicating liquor be opened on the premises of the retailer except as provided
141 by the retail license;

142 (d) For the purpose of this subsection, the word "brand" refers to
143 differences in brand name of product or differences in nature of product; examples
144 of different brands would be products having a difference in: brand name; class,
145 type or kind designation; appellation of origin (wine); viticulture area (wine);
146 vintage date (wine); age (distilled spirits); or proof (distilled spirits); differences
147 in packaging such a different style, type, size of container, or differences in color
148 or design of a label are not considered different brands;

149 (8) The distiller, wholesaler, winemaker or brewer may package and
150 distribute intoxicating beverages in combination with other nonalcoholic items as
151 originally packaged by the supplier for sale ultimately to consumers;
152 notwithstanding any provision of law to the contrary, for the purpose of this
153 subsection, intoxicating liquor and wine wholesalers are not required to charge
154 for nonalcoholic items any more than the actual cost of purchasing such
155 nonalcoholic items from the supplier;

156 (9) The distiller, wholesaler, winemaker or brewer may sell or give the
157 retail business newspaper cuts, mats or engraved blocks for use in the
158 advertisements of the retail business;

159 (10) The distiller, wholesaler, winemaker or brewer may in an
160 advertisement list the names and addresses of two or more unaffiliated retail
161 businesses selling its product if all of the following requirements are met:

162 (a) The advertisement shall not contain the retail price of the product;

163 (b) The listing of the retail businesses shall be the only reference to such

164 retail businesses in the advertisement;

165 (c) The listing of the retail businesses shall be relatively inconspicuous in
166 relation to the advertisement as a whole; and

167 (d) The advertisement shall not refer only to one retail business or only
168 to a retail business controlled directly or indirectly by the same retail business;

169 (11) Notwithstanding any other provision of law to the contrary, distillers,
170 winemakers, wholesalers, brewers or retailers may conduct a local or national
171 sweepstakes/contest upon a licensed retail premise. However, no money or
172 something of value may be given to the retailer for the privilege or opportunity
173 of conducting the sweepstakes or contest;

174 (12) The distiller, wholesaler, winemaker or brewer may stock, rotate,
175 rearrange or reset the products sold by such distiller, wholesaler, winemaker or
176 brewer at the establishment of the retail business so long as the products of any
177 other distiller, wholesaler, winemaker or brewer are not altered or disturbed;

178 (13) The distiller, wholesaler, winemaker or brewer may provide a
179 recommended shelf plan or shelf schematic for distilled spirits, wine or malt
180 beverages;

181 (14) The distiller, wholesaler, winemaker or brewer participating in the
182 activities of a retail business association may do any of the following:

183 (a) Display its products at a convention or trade show;

184 (b) Rent display booth space if the rental fee is the same paid by all
185 others renting similar space at the association activity;

186 (c) Provide its own hospitality which is independent from the association
187 activity;

188 (d) Purchase tickets to functions and pay registration fees if such
189 purchase or payment is the same as that paid by all attendees, participants or
190 exhibitors at the association activity; and

191 (e) Make payments for advertisements in programs or brochures issued
192 by retail business associations at a convention or trade show if the total payments
193 made for all such advertisements do not exceed three hundred dollars per year
194 for any retail business association;

195 (15) [The distiller, wholesaler, winemaker or brewer] **Distillers,**
196 **wholesalers, winemakers, or brewers** may sell [its] other merchandise which
197 does not consist of intoxicating beverages to [a] retail [business if the following
198 requirements are met:

199 (a) The distiller, wholesaler, winemaker or brewer shall also be in

200 business as a bona fide producer or vendor of such merchandise;

201 (b) The merchandise shall be sold at its fair market value;

202 (c) The] **businesses provided that such** merchandise is not sold in
203 combination with distilled spirits, wines or malt beverages, except as provided in
204 **subdivision (8) of subsection 4 of this section. Notwithstanding any**
205 **provision of law to the contrary, the division of alcohol and tobacco**
206 **control shall have no regulatory authority over distillers, wholesalers,**
207 **winemakers, or brewers with respect to the sales, marketing, or**
208 **promotional practices associated with merchandise which does not**
209 **consist of intoxicating beverages;**

210 [(d) The acquisition or production costs of the merchandise shall appear
211 on the purchase invoices or records of the distiller, wholesaler, winemaker or
212 brewer; and

213 (e) The individual selling prices of merchandise and intoxicating
214 beverages sold to a retail business in a single transaction shall be determined by
215 commercial documents covering the sales transaction;]

216 (16) The distiller, wholesaler, winemaker or brewer may sell or give [an]
217 **a permanent** outside sign to a retail business if the following requirements are
218 met:

219 (a) The sign, **which shall be constructed of metal, glass, wood,**
220 **plastic, or other durable, rigid material, with or without illumination,**
221 **or painted or otherwise printed onto a rigid material or structure, shall**
222 bear in a conspicuous manner substantial advertising matter about the product
223 or the name of the distiller, wholesaler, winemaker or brewer;

224 (b) The retail business shall not be compensated, directly or indirectly, for
225 displaying the sign; [and]

226 (c) The cost of the sign, **if given to a retailer,** shall not exceed four
227 hundred dollars; **and**

228 **(d) Temporary banners of a seasonal nature or promoting a**
229 **specific event shall not be constructed to be permanent outdoor signs**
230 **and may be provided to retailers at no charge;**

231 (17) A wholesaler may, but shall not be required to, exchange for an equal
232 quantity of identical product or allow credit against outstanding indebtedness for
233 intoxicating liquor with alcohol content of less than five percent by weight or
234 nonintoxicating beer that was delivered in a damaged condition or damaged while
235 in the possession of the retailer;

236 (18) To assure and control product quality, wholesalers at the time of a
237 regular delivery may, but shall not be required to, withdraw, with the permission
238 of the retailer, a quantity of intoxicating liquor with alcohol content of less than
239 five percent by weight or nonintoxicating beer in its undamaged original carton
240 from the retailer's stock, if the wholesaler replaces the product with an equal
241 quantity of identical product;

242 (19) In addition to withdrawals authorized pursuant to subdivision (18)
243 of this subsection, to assure and control product quality, wholesalers at the time
244 of a regular delivery may, but shall not be required to, withdraw, with the
245 permission of the retailer, a quantity of intoxicating liquor with alcohol content
246 of less than five percent by weight and nonintoxicating beer in its undamaged
247 original carton from the retailer's stock and give the retailer credit against
248 outstanding indebtedness for the product if:

249 (a) The product is withdrawn at least thirty days after initial delivery and
250 within twenty-one days of the date considered by the manufacturer of the product
251 to be the date the product becomes inappropriate for sale to a consumer; and

252 (b) The quantity of product withdrawn does not exceed the equivalent of
253 twenty-five cases of twenty-four twelve-ounce containers; and

254 (c) To assure and control product quality, a wholesaler may, but not be
255 required to, give a retailer credit for intoxicating liquor with an alcohol content
256 of less than five percent by weight or nonintoxicating beer, in a container with a
257 capacity of four gallons or more, delivered but not used, if the wholesaler removes
258 the product within seven days of the initial delivery; and

259 (20) Nothing in this section authorizes consignment sales.

260 5. All contracts entered into between distillers, brewers and winemakers,
261 or their officers or directors, in any way concerning any of their products,
262 obligating such retail dealers to buy or sell only the products of any such
263 distillers, brewers or winemakers or obligating such retail dealers to buy or sell
264 the major part of such products required by such retail vendors from any such
265 distiller, brewer or winemaker shall be void and unenforceable in any court in
266 this state.

267 6. Notwithstanding any other provisions of this chapter to the contrary,
268 a distiller or wholesaler may install dispensing accessories at the retail business
269 establishment, which shall include for the purposes of distilled spirits, equipment
270 to properly preserve and serve premixed distilled spirit beverages only. To
271 facilitate delivery to the retailer, the distiller or wholesaler may lend, give, rent

272 or sell and the distiller or wholesaler may install or repair any of the following
273 items or render to retail licensees any of the following services: coils and coil
274 cleaning, draft arms, faucets and tap markers, taps, tap standards, tapping
275 heads, hoses, valves and other minor tapping equipment components, and damage
276 caused by any delivery excluding normal wear and tear. A complete record of
277 equipment furnished and installed and repairs or service made or rendered shall
278 be kept by the distiller or wholesaler furnishing, making or rendering the same
279 for a period of not less than one year.

280 7. Notwithstanding any other provision of this chapter or chapter 312,
281 RSMo, to the contrary, distillers, winemakers, brewers or their employees or
282 officers shall be permitted to make contributions of money or merchandise to a
283 licensed retail liquor dealer that is a charitable or religious organization as
284 defined in section 313.005, RSMo, or an educational institution if such
285 contributions are unrelated to such organization's retail operations.

286 8. Notwithstanding any other provision of this chapter or chapter 312,
287 RSMo, to the contrary, a brewer or manufacturer, its employees, officers or agents
288 may have a financial interest in the retail business for sale of intoxicating liquors
289 and nonintoxicating beer at entertainment facilities owned, in whole or in part,
290 by the brewer or manufacturer, its subsidiaries or affiliates including, but not
291 limited to, arenas and stadiums used primarily for concerts, shows and sporting
292 events of all kinds.

293 9. Notwithstanding any other provision of this chapter or chapter 312,
294 RSMo, to the contrary, for the purpose of the promotion of tourism, a wine
295 manufacturer, its employees, officers or agents located within this state may
296 apply for and the supervisor of liquor control may issue a license to sell
297 intoxicating liquor, as defined in this chapter, by the drink at retail for
298 consumption on the premises where sold, if the premises so licensed is in close
299 proximity to the winery. Such premises shall be closed during the hours specified
300 under section 311.290 and may remain open between the hours of 9:00 a.m. and
301 midnight on Sunday.

302 10. Notwithstanding any other provision of this chapter or chapter 312,
303 RSMo, to the contrary, for the purpose of the promotion of tourism, a person may
304 apply for and the supervisor of liquor control may issue a license to sell
305 intoxicating liquor by the drink at retail for consumption on the premises where
306 sold, but seventy-five percent or more of the intoxicating liquor sold by such
307 licensed person shall be Missouri-produced wines received from manufacturers

308 licensed under section 311.190. Such premises may remain open between the
309 hours of 6:00 a.m. and midnight, Monday through Saturday, and between the
310 hours of 11:00 a.m. and 9:00 p.m. on Sundays.

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